

TESTIMONY OF THE OFFICE OF HAWAIIAN AFFAIRS
ON S. 2899, H.R. 4904
SUBMITTED AUGUST 23, 2000

Co-Chairs Senator Inouye and Congressman Abercrombie, Senator Akaka, Congresswoman Mink and Congressman Faleomavaega. My name is Clayton Hee, Chairman of the Board of Trustees of the Office of Hawaiian Affairs, and I am here to testify on behalf of OHA in support of Senate Bill 2899 and House Resolution 4904, relating to federal recognition for Native Hawaiians.

Let me start by thanking our Congressional delegation for their hard work over the years in securing programs for the benefit of Native Hawaiians and for their leadership and support of the Hawaiian community at this critical time.

The pursuit of justice for Hawaiians has been a long and arduous journey. For the overwhelming majority of Hawaiians, justice means political status and federal recognition, the restoration of our inherent sovereignty and redress from the United States for the illegal overthrow of the Kingdom of Hawaii in 1893.

Our struggles have intensified in the last 40 years in pursuit of justice for Hawaiians, but we have reached a crossroad in that journey where recent events have shown us all too clearly that we must act now – we must take a monumental step forward in our efforts to find justice for Hawaiians or risk the loss of essential programs and benefits gained for our people.

By recent events I am referring, of course, to the "Freddy Rice case" and its fallout -- at least the fallout to date. Earlier this year, in Rice v. Cayetano, the U.S. Supreme Court ruled that Hawai'i's denial of Rice's right to vote in OHA trustee elections violated the Fifteenth Amendment. As a result, all registered voters in Hawai'i have the right to cast ballots in the election of trustees to the Office of Hawaiian Affairs regardless of ancestry.

Another lawsuit has been filed recently to eliminate the Hawaiians-only restriction on candidates for election to the office of OHA trustee. One of the plaintiffs in this matter has succeeded in obtaining a preliminary injunction from the federal district court allowing him, as a non-Hawaiian, to file nomination papers to run for OHA trustee. The plaintiffs have made no secret of their desire to bring about the demise of OHA.

The Rice decision will continue to breed similar lawsuits. It will continue to be utilized to erect roadblocks along the path to justice for Hawaiians. As I have said, it is not only our future progress that is at risk, but erosion of the many advances Hawaiians have gained in health, education and housing benefits with the dedication and support of our Congressional delegation. Both state and federal policy makers have acted on the premise that programs provided for the benefit of Native Hawaiians have been legal, constitutional and morally right. The Rice decision opens the door to challenge the entire framework of federal and state laws put in place to benefit Native Hawaiians until our status as a native people has been settled.

So we are at a critical moment in our history as a people. The Rice and Arakaki cases directly impact OHA, but if we fail to act now, these challenges to our rights as a native people will have far reaching and more devastating impacts on Hawaiians and non-Hawaiians who benefit from programs that are available to Hawaiians.

All of these concerns and the urgency felt in the community have given rise to the legislation before us. We are fortunate that Senator Akaka and Senator Inouye, Congressman Abercrombie and Congresswoman Mink have undertaken leadership in this matter and have sought, and continue to seek, the mana'o of the community, both Hawaiian and non-Hawaiian, to move us forward toward justice for Hawaiians by seeking formal recognition of our political status as a native people.

Today, more than 550 indigenous peoples have already attained such recognition from the federal government. Federally recognized indigenous peoples have the right under U.S. law to special benefits in the areas of health, education, housing, social services and economic development. They have the authority to govern themselves, to elect their own leaders, to determine their own membership and to have their own land base. The Navajo Indians have over 14 million acres of land in several states. The Alaska Natives have over 44 million acres of land. Although there are more Hawaiians than Navajos, Alaska Natives or any other native peoples in the United States, Hawaiians have remained without recognition of our right to self-govern and a settlement that would provide us with a land base which is crucial to our economic and spiritual well-being. The best case scenario is for Congress to formalize the political status and federal recognition of Hawaiians and this bill expedites constituting a representative political entity.

This legislation provides us with the opportunity not only to protect current programs for Hawaiians, but to meaningfully address this lingering injustice. As such, it is the first step, but an essential step, on the journey for Hawaiians towards reconciliation. The President and Congress have committed themselves to the process of reconciliation with Hawaiians through the Apology Bill. Senate Bill 2899 and House Resolution 4909 promote such reconciliation by acknowledging as a matter of policy that:

- Native Hawaiians are a unique and distinct aboriginal, indigenous, native people, with whom the United States has a political and legal relationship;
- The United States has a special trust relationship to promote the betterment of Native Hawaiians;
- Congress possesses the authority under the Constitution to enact legislation to address the conditions of Native Hawaiians and has exercised that authority;
- Native Hawaiians have an inherent right to (i) autonomy in their internal affairs; (ii) self-determination and self-governance, and (iii) reorganization of a Native Hawaiian governing body; and that
- The United States shall continue to engage in the process of reconciliation and political

relations with the Native Hawaiian people.

To that end, the proposed legislation provides for:

- A process by which Native Hawaiians can organize themselves for the purpose of self-governance. Significantly, the process is inclusive. There is no pre-determination as to the form that governing body will take.
- Establishment of an Office of Special Trustee for Native Hawaiian Affairs. The Office is not the federalization of OHA, but a new office within the Department of Interior to, among other things, effectuate the special trust relationship between the Native Hawaiian people and the U.S., to assist the Native Hawaiian people in facilitating the process for self-determination, and to be responsible for continuing the process of reconciliation with the Native Hawaiian governing body.
- Designation of a representative in the Department of Justice to assist the Office in implementation and protection of the rights of Native Hawaiians, the Native Hawaiian governing body and its political and legal relationship to the U.S.
- Establishment of an interagency task force to coordinate federal policy concerning Native Hawaiians.
- Notwithstanding any other provision of law, notwithstanding the decision in Rice, federal recognition of the governing body organized by Native Hawaiians as the representative governing body of the Native Hawaiian people.

We are pleased that many of the foregoing initiatives were recommended by OHA in its reconciliation testimony to representatives of the Departments of Interior and Justice this past January. We are also gratified that there has been tremendous support in the community to include a process for self-determination in the bill -- a position which the Board of Trustees has consistently supported.

We would like to acknowledge our Congressional delegation once again for their leadership. While we recognize there remains a difference of opinion in the Hawaiian community regarding the methods of achieving the goal of self-determination, we believe this legislation provides us with a constructive process and a timely opportunity to achieve our ultimate goal of self-governance and, with a truly representative governing body, the achievement of a settlement with Native Hawaiians for the unlawful taking of our kingdom and lands. It rightfully leaves potentially divisive issues, such as blood quantum, for Hawaiians to decide as a self-governing people.

The timing of this bill is absolutely critical, in terms of the threats to Hawaiian rights that have only begun to surface in the wake of Rice and as a matter of policy if we are to achieve any kind of meaningful reconciliation with the United States. For Hawaiians, the time is now and the opportunity is ours to seize to move forward together on our common journey for justice.

In conclusion, I believe there are no other meaningful alternatives at present. This legislation will help Hawaiians protect our entitlements, but it does not preempt others from continuing their journey, including in the international arena. Let us be reminded of what Queen Liliuokalani once said:

Nana i ka nana 'ole
Lohe i ka lohe 'ole
'Ike i ka 'ike, 'ole
'Oia ka mana'o, 'oia ka mana
'Ola ka piko o ka hua olelo o aloha.

To see what cannot be seen,
To hear what cannot be heard,
And to know the unknowable,
That is the meaning, that is the power,
And that is the essence of the word aloha.

Thank you for the opportunity to testify on this measure.